

**REMARKS**

By the foregoing amendment, claims 15-26 have been canceled, without prejudice to filing one or more copending applications for the canceled subject matter.

No new matter is added by the amendment.

The pending claims are 27-32.

**The § 101 Rejection**

Claims 15-26 stand rejected under 35 U.S.C. § 101 as being directed to non-statutory subject matter. The Office Action alleges that claims 14-26 read on a product of nature. While Applicants do not concur with the reasons given for the rejection, in the interest of compact prosecution, claims 15-26 have been canceled, thereby rendering the rejection moot. Thus, Applicants request withdrawal of this ground of rejection.

**The § 112, Second Paragraph, Rejection**

Claims 15-26 stand rejected under 35 U.S.C. § 112, second paragraph, as allegedly being indefinite. While Applicants do not agree with the reasons given for the rejection, in the interest of compact prosecution, claims 15-26 have been canceled, which renders this ground of rejection moot. Applicants therefore request withdrawal of this ground of rejection.

**The § 102/103 Rejection**

Claims 15-18, 20-24 and 26 stand rejected under 35 U.S.C. § 102(b) as being anticipated by, or in the alternative under 35 U.S.C. § 103(a) as being obvious over Blasi et al. (US 5,416,006). Applicants do not concur with the reasons given for this rejection; however, in the

interest of compact prosecution, Applicants have canceled claims 15-18, 20-24 and 26. Thus, this ground of rejection is moot and should be withdrawn.

Claims 15-18, 20-24 and 26 stand rejected under 35 U.S.C. § 102(e) as being anticipated by, or in the alternative under 35 U.S.C. § 103(a) as being obvious over Kobayashi et al. (US 6,509,445). Applicants present the following remarks in traversal of this ground of rejection.

Applicants first point out that Kobayashi et al. is not an effective reference under § 102(e). According to M.P.E.P. § 706(f)(1)(C)(3), a U.S. patent issuing from an application having an international filing date prior to November 29, 2000, is only an effective reference under § 102(e) upon the date on which the application was brought into compliance with 37 C.F.R. § 371(c)(1), (2) and (4). In this case, Kobayashi et al. issued from a U.S. application having a PCT filing date of January 6, 1997, and thus comes under the analysis presented in M.P.E.P. § 706(f)(1)(C)(3). The Kobayashi et al. patent has a § 371(c)(1), (2) and (4) date of July 8, 1998. (See section 86 on front page of patent). As this date is after the earliest effective filing date of the instant application, which is July 25, 1997, Kobayashi et al. does not qualify as prior art against the instant application under § 102(e). Accordingly, the rejection over Kobayashi et al. is improper and should be withdrawn on this basis alone.

In any case, claims 15-18, 20-24 and 26 have been canceled. Accordingly, the § 102(e)/103(a) rejections have been rendered moot.

#### The Obviousness-Type Double Patenting Rejection

Claims 15-32 stand rejected under the judicially-created doctrine of obviousness-type double patenting. Claims 15-26 have been canceled. Thus, this rejection of claims 15-26 has been rendered moot. Furthermore, although they do not necessarily concur with this ground of rejection, in the interest of compact prosecution Applicants enclose herewith a terminal

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disclaimer executed by the Assignee's CEO and President, Mr. Virgil Thompson. Applicants submit that the duly executed terminal disclaimer is sufficient to obviate the obviousness-type double patenting rejection. Applicants thus request withdrawal of this ground of rejection with respect to claims 27-32.


### **CONCLUSION**

In light of the amendments and remarks herein, Applicants submit that claims 27-32 are now in condition for allowance and respectfully request a notice to this effect. Should the Examiner have any questions or suggestions for expediting prosecution, he is invited to contact the undersigned.

Please charge any shortage in fees due in connection with the filing of this paper, including extension of time fees, to Deposit Account 502624 and please credit any excess fees to such deposit account.

Respectfully submitted,

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